



المحكمة الخاصة بلبنان
SPECIAL TRIBUNAL FOR LEBANON
TRIBUNAL SPÉCIAL POUR LE LIBAN

BEFORE THE APPEALS CHAMBER
Special Tribunal for Lebanon

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PROSECUTION'S OBSERVATIONS ON THE UNITED NATIONS *AMICUS CURIAE* BRIEF ON THE INVIOABILITY OF UNITED NATIONS DOCUMENTS

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I. PROCEDURAL BACKGROUND

1. A summary of these proceedings is set out at paragraphs 1 to 6 of the “Order Relating to the Jurisdiction of the Tribunal to Rule on the Application by Mr EL SAYED dated 17 March 2010 and Whether Mr EL SAYED has Standing Before the Tribunal.”¹
2. The Prosecution filed its appeal of the Order on 29 September 2010.²
3. On 1 October 2010, the President of the Special Tribunal for Lebanon³ issued a Scheduling Order⁴ in which he, *inter alia*, stayed the Order “until such time as these appellate proceedings are terminated.”⁵
4. In his Scheduling Order, the President also called upon the United Nations to file an *amicus curiae* brief by 6 October 2010 on “matters raised by” the Order. He further ordered that observations on such a brief by the Prosecution or the Applicant⁶ should be filed by 22 October 2010.
5. On 1 October 2010, the United Nations filed its “*Amicus Curiae* Brief on the inviolability of United Nations documents,”⁷ which requested that the Tribunal not grant the Applicant access to “United Nations documents without prior authorization of the United Nations.”⁸
6. On 11 October 2010, the Applicant appealed the President’s 1 October 2010 Scheduling Order,⁹ requesting that the Appeals Chamber: (1) quash the President’s

¹ Order Relating to the Jurisdiction of the Tribunal to Rule on the Application by Mr EL SAYED dated 17 March 2010 and Whether Mr EL SAYED has Standing Before the Tribunal, CH/PTJ/2010/005, 17 September 2010, “Order.”

² Appeal of the “Order Relating to the Jurisdiction of the Tribunal to Rule on the Application by Mr EL SAYED dated 17 March 2010 and Whether Mr EL SAYED has Standing Before the Tribunal” and Urgent Request for Suspensive Effect, OTP/AC/2010/01, 29 September 2010, “Appeal.”

³ The “President” and the “Tribunal,” respectively.

⁴ Scheduling Order, CH/PRES/2010/02, 1 October 2010, “1 October 2010 Scheduling Order.”

⁵ 1 October 2010 Scheduling Order, at p. 4.

⁶ Jamil EL SAYED, the “Applicant.”

⁷ *Amicus Curiae* Brief on the inviolability of United Nations documents, 1 October 2010, “*Amicus* Brief.”

⁸ *Amicus* Brief, para. 14.

⁹ Appeal against two decisions by the President: (1) to stay the Order of the Pre-Trial Judge and (2) to call upon the United Nations as *amicus curiae*, CH/PTJ/2010/01, 11 October 2010, “Recours.”

decision to stay the Order, and; (2) urgently stay the President's invitation to the United Nations to act as *amicus curiae*.

7. On 15 October 2010, the President extended the 22 October 2010 deadline to 5 November 2010,¹⁰ noting the "need for a more comprehensive discussion of the issues arising from the Amicus Curiae Brief, including the question of whether this is a matter to be decided during the instant appellate proceedings."¹¹
8. On 27 October 2010, the Head of Defence Office intervened by way of written submissions¹² pursuant to Rule 57(F).

II. SUBMISSIONS

A. Remarks on the *Amicus* Brief

9. The United Nations' request that the Tribunal not grant the Applicant access to "United Nations documents without prior authorization of the United Nations" does not require a decision in the instant appellate proceedings. The Appeal is confined to the procedural aspects of jurisdiction and standing,¹³ and does not concern issues related to the inviolability of UNIIC¹⁴ materials. Therefore, observations on the United Nations' *Amicus* Brief are premature.¹⁵
10. Without prejudice to paragraph 9, the Prosecution informs the Appeals Chamber that the United Nations do not object to the Prosecution providing the Applicant with copies of the documents detailed in his Application, that are both identifiable and in the Prosecution's possession, if ordered to do so by a Chamber.

¹⁰ Scheduling Order, CH/PRES/2010/05, 15 October 2010, "15 October 2010 Scheduling Order."

¹¹ 15 October 2010 Scheduling Order at p. 2.

¹² Intervention du Bureau de la Défense relative aux observations déposées par l'Organisation des Nations Unies, DO/AC/2010/01, 27 Octobre 2010, "Intervention."

¹³ Following the Applicant's letter to the President requesting access to documents dated 17 March 2010, which led to the Order Assigning Matter to Pre-Trial Judge, CH/PRES/2010/01, 15 April 2010, the issues to be decided by the Pre-Trial Judge, were the issues of jurisdiction and standing.

¹⁴ United Nations International Independent Investigation Commission "UNIIC."

¹⁵ Procedurally, the Head of Defence Office argues in line with the Prosecution in these Observations, that the inviolability of United Nations documents is not an issue to be decided in the instant appellate proceedings.

B. The Head of Defence Office's Intervention

11. The Prosecution does not intend to respond to the substance of the Intervention, but shall do so if requested by the Appeals Chamber.
12. The Prosecution notes that the Defence Office was not invited to intervene in these proceedings pursuant to either of the President's Scheduling Orders,¹⁶ nor was it granted leave to do so.
13. Rather, the Intervention is based on an overly expansive interpretation of Rule 57(F), acting *proprio motu* in the interests of justice, in order to address issues that might impact defence teams to come.¹⁷
14. Since the issues of jurisdiction and standing currently before the Appeals Chamber do not at this stage concern any defence team, the Head of Defence Office's Intervention is not only premature, but it exceeds the role that was intended for him by the Rules' drafters.

III. CONCLUSION

15. The Prosecution submits that the inviolability of United Nations documents is not an issue to be decided by the Appeals Chamber in the instant proceedings.

Original signed

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The Prosecutor

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Word count

¹⁶ 1 October 2010 Scheduling Order, 15 October 2010 Scheduling Order.

¹⁷ Intervention, para. 1.